

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS MCEACHIN,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
JEFFREY BEARD, et al.,	:	
	:	
Defendants	:	No. 02-04691

ORDER

AND NOW, this day of 2004, upon consideration of plaintiff Thomas McEachin's "Motion to Compel Discovery or Disclosure," and the Commonwealth defendants' response thereto, it is hereby ORDERED that the said motion is denied. Plaintiff shall file his response to the Commonwealth defendants' motion for summary judgment within 20 days from the date of this order.

BY THE COURT:

EDUARDO C. ROBRENO, J.

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THOMAS MCEACHIN,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
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	:	
JEFFREY BEARD, et al.,	:	
	:	
Defendants	:	No. 02-04691

**COMMONWEALTH DEFENDANTS' RESPONSE TO PLAINTIFF'S "MOTION TO
COMPEL DISCOVERY OR DISCLOSURE"**

Defendants Jeffrey A. Beard, Leslie Hatcher and Sergeant Swenski (collectively, "the Commonwealth defendants") hereby respond to plaintiff Thomas McEachin's motion titled "Motion to Compel Discovery or Disclosure." Plaintiff's motion should be denied for all the reasons set forth in the attached memorandum of law, incorporated herein by reference.

WHEREFORE, Plaintiff's motion should be denied and a final deadline issued for Plaintiff's response to the Commonwealth defendants' pending motion for summary judgment.

GERALD J. PAPPERT
ATTORNEY GENERAL

BY: s/ Kevin Bradford
Kevin R. Bradford
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**MEMORANDUM OF LAW IN SUPPORT OF COMMONWEALTH DEFENDANTS’
RESPONSE TO PLAINTIFF’S “MOTION TO COMPEL DISCOVERY OR
DISCLOSURE”**

I. INTRODUCTION

Plaintiff, Thomas McEachin, an inmate currently incarcerated at the State Correctional Institution at Albion, commenced this action pursuant to 42 U.S.C. § 1983. Plaintiff named as defendants Jeffrey A. Beard, Leslie Hatcher and Sergeant Swenski (collectively, “the Commonwealth defendants”). His claims are based upon the alleged wrongful confiscation of a \$30.00 watch and some toiletries.

The Commonwealth defendants filed a motion for summary judgment on January 15, 2004. Plaintiff was granted an extension of time in which to respond, which set April 2, 2004 as the new deadline. Plaintiff has yet to file any response.

On March 29, 2004, Plaintiff filed a motion titled “Rule 56(f) Motion to Postpone Consideration of Defendant’s [sic] Motion for Summary Judgment.” (Docket No. 30.) This motion, which more closely resembled a motion to compel combined with a second motion to extend the period of time in which to respond to the Commonwealth defendants’ summary judgment motion, was responded to in detail by the Commonwealth defendants on April 2,

2004. (Docket No. 31.) The instant motion, which is actually titled “Motion to Compel” (Docket No. 32), raises essentially the same arguments regarding discovery that Plaintiff raised in his prior motion.

II. ARGUMENT

A detailed synopsis of the recent events in this case, as well as the Commonwealth defendants’ comprehensive response to Plaintiff’s complaints about discovery, is provided in the Commonwealth defendants’ response to “Plaintiff’s Rule 56(f) Motion to Postpone Consideration of Defendant’s [sic] Motion for Summary Judgment.” (Docket No. 31.) This document is hereby incorporated into the instant response of the Commonwealth defendants.

Portions of Plaintiff’s instant motion do warrant a further response. Plaintiff has requested and been provided with the Pennsylvania Department of Corrections (“DOC”) policy DC-ADM 815. (Mot. to Compel, ¶ 4.) Although Plaintiff admits he has been provided with this policy, he insists that there is another version he wants, namely one with the effective date of April 2, 2001. (*Id.* at ¶6.) In his attempt to clarify which version he seeks, he attaches portions of the April 2, 2001 version of the policy to the instant motion. Such action makes evident what the Commonwealth defendants have expressed in all of their discovery responses: Plaintiff is in possession of and has access to DOC policies DC-ADM 801, 804, 815, and 203. Thus Plaintiff’s requests for copies of these policies are unreasonably duplicative and beyond the scope of discovery. *See* Fed.R.Civ.P. 26(b)(2)(i). Nonetheless, the Commonwealth defendants have mailed Plaintiff copies of these policies pursuant to his discovery requests. To the extent that he is dissatisfied with these documents, production of these policies is not required under the Federal Rules of Civil Procedure.

Plaintiff also complains about the documents he received in response to his requests for DOC policies 6.3.1, 6.3.7, and 6.8.2. (Mot. to Compel, ¶ 12.) Unlike Plaintiff's other discovery requests for DOC policies, none of Plaintiff's requests regarding these policies denoted the version sought. Thus the Commonwealth defendants attempted to provide Plaintiff with the version of these policies that would have been in effect at the time of the complained of incident, November – December 2001. Plaintiff is apparently satisfied with the version of policy 6.3.7 that he received. (*Id.* at ¶ 13.) However, research by undersigned counsel reveals that Plaintiff was provided with a version of policy 6.3.1 that was no longer in effect at the time of the complained of incident. The version of policy 6.3.1 that has an effective date of December 4, 2000 is the version that was in effect in November – December 2001, and remains in effect as of the date of this writing. A copy of this policy is attached to this response as Exhibit D-1 and is hereby being provided to Plaintiff. The final policy requested by Plaintiff is policy 6.8.2. There was no policy with the number 6.8.2 in effect in November – December 2001. It should be noted that policy 6.3.1 superseded policy 6.8.2 when it went into effect on December 4, 2000. (*See* Exh. D-1 at §§ X, A., aaa-ccc.)

The remainder of Plaintiff's discovery complaints has been fully addressed in the Commonwealth defendants' response to "Plaintiff's Rule 56(f) Motion to Postpone Consideration of Defendant's [sic] Motion for Summary Judgment" (Docket No. 31) and need not be repeated here.

III. CONCLUSION

Based on the foregoing, Plaintiff's motion to compel should be denied. Being that Plaintiff's response to the Commonwealth defendants' pending motion for summary judgment

is again past due, the Commonwealth defendants are not opposed to the Court's granting of a second and final extension of time for Plaintiff's response to this motion.

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Defendants	:	No. 02-04691

CERTIFICATE OF SERVICE

I, Kevin R. Bradford, Deputy Attorney General, hereby certify that the within Response in Opposition to Plaintiff's Rule 56(f) Motion was electronically filed on April 20, 2004 and is available for viewing and downloading from the ECF system at <https://ecf.paed.uscourts.gov/>.

I further certify that on the above date a true and correct copy of this document was mailed, by first class mail, postage prepaid to:

Thomas McEachin, # AY-8032
State Correctional Institute
at Albion
10745, Route 18
Albion, PA 16401

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